Office - Supreme Court, U.S.
FILED
JUN 1 1984
ALEXANDER L. STEVAS,
CLERK

No. 83-1267

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

MELVIN POWERS, DON NORWOOD,
CANDACE WOODLEY and DEBRA BAILES,
Petitioners,

v.

THE CITY OF HUNTSVILLE,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

CHARLES H. YOUNGER*
WALTER A. RECORD, III
City Attorney's Office
P.O. Box 308
Huntsville, AL 35804
(205) 532-7301
**Counsel of Record*

PRESS OF BYRON S. ADAMS, WASHINGTON, D.C. (202) 347-8203

BEST AVAILABLE COPY

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
STATEMENT OF THE CASE	1
A. Brief Statement Of Facts And Proceedings Below	1
B. The Federal Questions Alleged By The Petitioners Involve An Ordinance Of The City Of Huntsville .	5
THE WRIT OF CERTIORARI SHOULD BE DENIED BECAUSE THE HUNTSVILLE ORDINANCE IS CONSTITUTIONAL ..	5
A. The Huntsville Municipal Ordinance Which Adopts Section 13A-7-4 Of The Alabama Criminal Code Is A Valid Exercise Of The Police Power Of The City And State	6
B. There Is Ample Evidence In The Record Of This Case To Support The Conclusion That Petitioners Acted "Knowingly" Or Remained On the Premises "Unlawfully" Under The Terms Of The Huntsville Trespass Ordinance	10
C. The Court Of Criminal Appeals Correctly Found The Petitioners Guilty of Trespass	12
D. The Trespass Cases Were Handled Like Any Other Trespass Case In The City Of Huntsville. There Is No Evidence In The Record Of This Case To Support The Charge Of Selective Prosecution	13
CONCLUSION	13

TABLE OF AUTHORITIES

CASES: Page

Adderly v. *Florida*, 385 U.S. 39, 41-43, 87 S.Ct. 242, 17 L. Ed 2d 149 (1966) 8

Ahmed v. *Rockefeller*, 308 F. Supp. 935 (S.D.N.Y. 1970) 7

Arnett v. *Kennedy*, 416 U.S. 134, 40 L. Ed 2d 15, 94 S.Ct. 1633, reh. den. 417 U.S. 977 (1974) 9

Central Hardware Co. v. *National Labor Relations Board*, 407 U.S. 539, 92 S.Ct. 2238, 33 L. Ed 2d 122 (1972) 13

Commonwealth v. *Richardson*, 48 NE2d 678 (Mass. 1943), 146 ALR 648 8

Connally v. *General Construction*, 269 U.S. 385, 391, 46 S.Ct. 126, 127, 70 L. Ed 332 11

Edwards v. *South Carolina*, 372 U.S. 229, 236-237, 83 S.Ct 680, 9 L. Ed 2d 697 (1963) 8

In the Interest of Brooks, 618 P2d 814 (Kan. 1980) ... 9

Kay v. *U.S.*, 303 US 1, 82 L.Ed 607, 58 S.Ct. 468 (1938) 9

NLRB v. *Babcock and Wilcox Co.*, 351 U.S. 105, 75 S.Ct. 679, 100 L. Ed 975 (1956) 12

Oyler v. *Boles*, 368 U.S. 448, 82 S.Ct. 501, 7 L. Ed 2d 446 (1962) 13

People v. *Brown*, 305 N.Y.S. 2d 449, (N.Y. Ct. App. 1969) 6

People v. *Bush*, 39 N.Y. 2d 529, 384 N.Y.S. 2d 733, 349 N.E. 2d 832 (1976) 7

People v. *Chachere*, 428 N.Y.S. 2d 781 (N.Y.D.C. 1980) 7

People v. *Declemente*, 442 N.Y.__ 2d, 931, (N.Y. Crim. Ct. 1981) 6

People v. *Harrison*, 178 N.W. 2d 650, (Mich. 1970) ... 8

People v. *Hedemann*, 438 N.Y.S. 2d 172 (1981) 8

People v. *Nunez*, 431 N.Y.S. 2d 650 (N.Y. Crim. Ct. 1980) 7

Roth v. *United States*, 354 U.S. 476, 1 L. Ed 2d 1498, 77 S.Ct. 1304 reh. den. 78 S.Ct. 8 (1957) 9

Sears Roebuck & Co. v. *San Diego County District Council of Carpenters*, 436 U.S. 180, 98 S.Ct. 1745, 56 L. Ed 2d 209, (1978) 12

Table of Authorities Continued

Page

Snowden v. *Hughes*, 321 U.S. 1, 64 S.Ct. 397, 88 L. Ed 497 (1944) 13

Starley v. *City of Birmingham*, 377 SO. 2d 1131, (Ala. Crim. Apy 1979) 13

United States v. *Harris*, 347 U.S. 612, 98 L. Ed 989, 74 S.Ct. 808, (1954) 9

United States v. *National Dairy Products*, 372 U.S. 29, 9 L. Ed 561, 83 S.C. 1011, (1963) 9

United States v. *Powell*, 423 U.S. 87, 46 L. Ed 2d 288, 96 S.Ct. 316 (1975) 9

U.S. v. *Petrillo*, 332 U.S. 1, 91 L. Ed 1877, 67 S.Ct. 1538 (1947) 9

OTHER AUTHORITIES:

Alabama Criminal Code, 1975, § 13A-7-4 7

Annotation, 145 ALR 655 8

Model Penal Code, § 221.2 6

New York Penal Code, § 140.05 6

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

No. 83-1267

MELVIN POWERS, DON NORWOOD,
CANDACE WOODLEY and DEBRA BAILES,
Petitioners,

v.

THE CITY OF HUNTSVILLE,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

STATEMENT OF THE CASE

A. Brief Statement Of Facts And Proceedings Below

The following facts were well stated by Amicus on behalf of Albertsons in its brief in response to the petition, however, the City wishes to point out the following particular facts. Petitioners entered the Albertsons Store in Huntsville, Alabama, on November 24, 1981. (Tr. 61)[1] Two of the Petitioners—Bailes and Woodley—had recently been discharged as employees of Albertsons' Huntsville Store. At the time of their dismissal, Bailes and Woodley were advised that they would not be permit-

[1] References to the Official Transcript of the Huntsville Municipal Court proceedings are hereafter referred to as (Tr.).

ted to return to the store for any reason in light of the circumstances which necessitated their discharge. (Tr. 61) As a result, when Bailes and Woodley entered the store, Albertsons management informed the two former employees that they were not allowed to remain on the premises and requested them to leave immediately. (Tr. 61) The former employees refused. At this point, Petitioners Powers and Norwood interceded on behalf of the other two Petitioners, declaring the group's intent to remain on Albertsons' premises. (Tr. 62) Until this time, Albertsons had no idea of the identity of Powers and Norwood, or that they were associated with Bailes and Woodley. (Tr. 63) Petitioners Bailes and Woodley, as well as Petitioners Powers and Norwood, proceeded to the "Deli" area of the store and sat at a customer table. In response, Albertsons called the police. (Tr. 64)

Several police officers responded to the call. They advised Store Manager, George Malmberg, to repeat, in their presence, his request that the group leave the premises. After Malmberg's request was refused, the police themselves directed Petitioners to leave the premises or face criminal charges. (Tr. 21, 24) Despite these ample warnings, Petitioners refused to leave voluntarily. After Petitioner Powers belligerently taunted the police with a sarcastic remark, he was arrested for criminal trespass and led from the store. (Tr. 24) The other Petitioners were not arrested because they agreed to leave voluntarily. (Tr. 24, 25). However, as the three individuals departed, they shouted slogans and created a major disruption in the store. (Tr. 33. 72).

Later that afternoon, the same four individuals returned to the store. Again, Albertsons directed Petitioners to leave the premises, but they refused. The police were called, and after the police made several requests

for the group to depart, all four members were arrested for criminal trespass. (Tr. 39, 42) The same disruptive scene was repeated for a third time later that evening, and again resulted in the arrest of Petitioners Powers and Norwood. (Tr. 53. 57)

Albertsons' initial request to leave the premises was directed only at the discharged employees, Bailes and Woodley, who had specifically been informed previously that they would not be allowed back in the store. Subsequent requests were directed toward all four Petitioners after the first arrest and confrontation demonstrated that all of the Petitioners—including Powers and Norwood—were intent upon disruptive activity. (Tr. 33, 39, 40, 85) It should also be emphasized that Petitioners did not attempt to speak with other employees or disseminate union-oriented literature during the course of their trespass. (Tr. 21. 25) Instead, they waited defiantly in the "deli" section of the store for the inevitable, disruptive confrontations with the police, without attempting to initiate any union organizational activity. The unrebutted testimony of all the police officers involved was that they had no knowledge that the individuals they were arresting had anything to do with a union organizational drive, or a labor relations problem, but that the arrests that were made were handled in the same manner as other "trespass after warning" cases were handled on a day-to-day basis in the City of Huntsville. (Tr. 24, 32, 43, 44)

On December 2, 1981, while Petitioners were awaiting trial on criminal trespass charges, the Retail Clerks Union, Local 1557 ("the Union") filed unfair labor practice charges against Albertsons with the National Labor Relations Board (the "NLRB") alleging, *inter alia*, violations stemming from the above arrests. These charges contain a multitude of issues, all but one of which is

unrelated to the instant criminal proceeding. Pursuant to these charges, the NLRB General Counsel issued an unfair labor practice complaint against Albertsons. Resolution of these allegations is pending before the NLRB.

On December 28, 1981, Petitioners were each convicted of third degree criminal trespass in Huntsville Municipal Court, and fined $25.00 each plus costs. (Tr. 106) Petitioners then exercised their right to an appeal in the Circuit Court of Madison County. The Circuit Court affirmed the convictions and imposed fines on Petitioners. The Alabama Court of Criminal Appeals affirmed the convictions and the Alabama Supreme Court denied a Petition for a Writ of Certiorari. In addition, the U.S. District Court for the Northern District of Alabama refused to grant the Petitioners injunctive relief against the City of Huntsville. (Civil Action No. 81-HM-5430-NE) Furthermore, Petitioners are involved in a case before the National Labor Relations Board (NLRB). It appears that the Petitioners are interjecting the subject matter of a NLRB dispute into ordinary criminal proceedings in the Alabama Courts. The evidence in this case shows no clear labor dispute. The Petitioners interject labor dispute questions in the case at bar through the bare assertions of their counsel. (Appendix 2a-12a)

Convictions were reached after the Municipal Court, the Circuit Court, the Alabama Court of Criminal Appeals, and the Alabama Supreme Court rejected arguments made by the Petitioners that, under the federal labor law "preemption" doctrine, Alabama local and State courts did not have subject matter jurisdiction to hear or decide this dispute and that the Huntsville Municipal Ordinance was unconstitutional.

B. The Federal Questions Alleged By The Petitioners Involve An Ordinance Of The City Of Huntsville

The present cases arise from the violation of a municipal ordinance of the City of Huntsville. Section 18-2 of the Code of Ordinances of the City of Huntsville provides that:

> "Any person or corporation committing an offense within the corporate limits of the City or within the police jurisdiction thereof, which is declared by a law or laws of the state now existing or hereafter enacted to be a violation, shall be guilty of an offense against the City. (Code 1962, § 19-1; Ord. No. 79-436, § 2, 12-27-79)."

The Alabama State Law which becomes an offense against the City is Section 13A-7-4 of the Alabama Criminal Code which provides:

> "(a) A person is guilty of criminal trespass in the third degree when he knowingly enters or remains unlawfully on or upon premises.
>
> (b) Criminal trespass in the third degree is a violation."

Thus, the central issue in this case is the validity of a Municipal Ordinance which adopts a state statute as the law of the city.

THE WRIT OF CERTIORARI SHOULD BE DENIED BECAUSE THE HUNTSVILLE ORDINANCE IS CONSTITUTIONAL

The City of Huntsville will argue sections B. C. D and E of Petitioner's Brief which involve the reasons for granting the Writ of Certiorari. Sections A and F of the Petitioners argument will be discussed in an Amicus Curiae Brief on the behalf of Albertsons. These sections involve questions of Labor Law peripheral to the main issues in this case. The City of Huntsville adopts the arguments of

Amicus on behalf of Albertsons with respect to those issues.

A. The Huntsville Municipal Ordinance Which Adopts Section 13A-7-4 Of The Alabama Criminal Code Is A Valid Exercise Of The Police Power Of The City And State.

A reading of the City's Trespass Ordinance will show that it is not vague or contrary to due process. The only evidence showing the Ordinance is unconstitutional is the bare allegations of the Petitioners unsupported by facts.

Section 13A-7-4 of the Alabama Criminal Code states that "(a) person is guilty of criminal trespass in the third degree when he *knowingly enters* or *remains unlawfully* in or upon premises (emphasis supplied.)

The trespass ordinance used by the City of Huntsville is an adoption of Section 13A-7-4 of the Alabama Criminal Code, 1975. In turn the drafters of the section used in the Alabama Criminal Code, 1975, adopted verbatim the language in the New York Revised Penal Law § 140.05 which is in turn adopted from the Model Penal Code § 221.2.

In *People* v. *Declemente*, 442, N.Y.S.2d, 931, (N.Y. Crim. Cit. 1981) it was held that § 140.05 of the *New York Penal Code* would substantiate the conviction of persons for trespassing upon the grounds of a department store after an order was given excluding an individual from the premises. In *People* v. *Brown*, 306 N.Y.S.2d 449, (N.Y. Ct. App. 1969) construed § 140.05 of the *New York Penal Code* to be valid and constitutional if the prosecution established (1) a lawful order not to remain personally communicated to the defendant; and (2) the defendant defies such lawful order and remains. Such was done in our case where both the police officers and store manager communicated to Petitioners that they were to leave

Albertsons Department Store and they wilfully remained. (Tr. 5, 23, 24, 39, 40, 75, 76). In *People* v. *Nunez*, 431 N.Y.S.2d 650 (N.Y. Crim. Ct. 1980) it was held that a private person has a right to bar an individual from private property (under § 140.05) and similarly could bar an individual from a quasi-private building, such as a department store, so long as the exclusion was not founded on race, creed, color, or national origin. Again, there is not one shred of evidence to show that Respondent's enforcement of § 13A-7-4 (New York Penal Code § 140.05) was based on race, creed, color, or national origin. Also, see *People* v. *Chachere*, 428 N.Y.S.2d 781 (N.Y. D.C. 1980) where it was held that under the charge of trespass (New York Penal Law § 140.05), that despite a defendant's belief that his act of trespassing was moral and justified, a defendant who participated in a mass demonstration at a nuclear power plant could not establish a defense of justification to the charge of trespassing This case would negate allowing any belief of Petitioners that what they were doing was justified to serve as a defense to the charge of "trespass after warning" especially where there is no testimony on record as to such belief.

The Alabama Court of Criminal Appeals presents a strong argument in favor of the Huntsville Ordinance: "New York's § 140.05 was upheld in *People* v. *Bush*, 39 N.Y. 2d 529, 384 N.Y.S. 2d 733, 349 N.E. 2d 832 (1976). New York's § 140.10, which corresponds to Alabama's § 13A-7-3 (criminal trespass in the second degree) was upheld in *Ahmed* v. *Rockefeller*, 308 F. Supp. 935 (S.D.N.Y. 1970). Although a different statute was involved in Ahmed, the United States District Court analyzed and validated the same "enters or remains unlawfully" language found in § 13A-7-4. That court reasoned:

> "The definition of 'trespass' is exact and straightforward, and without any explanation by the plaintiffs

> of just where the ambiguity lies, we conclude that it is not unconstitutionally vague. See, *Adderley* v. *Florida*, 85 U.S. 39, 41-43, 87 S.Ct. 242, 17 L. Ed 2d 149 (1966); *Edwards* v. *South Carolina*, 372 U.S. 229, 236-237, 83 S.Ct. 680, 9 L. Ed. 2d 697 (1963). Nor is it so broadly drawn that it invades an area of protected expression. Its application is limited by the word of art 'unlawfully' only to those who are in a place where they do not have a right to be. See *Adderley* v. *Florida*, supra. 385 U.S. at 41-43, 47, 87 S.Ct. 242."

In addition, *People* v. *Hedemann*, 438 N.Y.S. 2d 172 (1981) upheld the validity of the New York trespass statute, § 140.05, in spite of the contention that the trespass law was being enforced in a manner which infringed upon constitutionally protected speech and conduct. In that case, the defendant had been distributing tax protest literature in a branch of the Internal Revenue Service in an area open to the public that was used for the transaction of business.

Trespass statutes have been held constitutional against contentions that they violate the Fourteenth Amendment to the Federal Constitution. 75 Am. Jr. 2d 71, Trespass § 87; *Commonwealth* v. *Richardson*, 48 NE2d 678 (Mass. 1943), 146 ALR 648, see *Annotation* 146 ALR 655.

"Those who are otherwise in violation of a criminal trespass statute are not exempted from prosecution thereunder by the mere fact that while in the course of their trespass, they were displaying signs, distributing leaflets, or otherwise exercising First Amendment rights." 75 Am. Jur 2d 77, Trespass § 92; *People* v. *Harrison*, 178 N.W.2d 650, (Mich. 1970)

The Huntsville Ordinance is as specific and definite as necessary to overcome challenges to its constitutionality under the First and Fourteenth Amendments. A statute

is not unconstitutionally vague when it is set out in terms that an ordinary person using ordinary common sense can understand and comply with it. *Arnett* v. *Kennedy*, 416 U.S. 134, 40 L. Ed 2d 15, 94 S.Ct. 1633, reh. den. 417 U.S. 977 (1974), *Roth* v. *United States*, 354 U.S. 476, 1 L. Ed 2d 1498, 77 S.Ct. 1304, reh. den. 78 S.Ct. 8, (1957). If the meaning of the terms of a statute has long been recognized in law and life, it is sufficiently definite. *In Interest of Brooks*, 618 P2d 814 (Kan. 1980). The U.S. Constitution does not require impossible standards of clarity. *U.S.* v. *Petrillo* 332 U.S. 1, 91 L. Ed 1877, 67 S.Ct. 1538 (1947).

An ordinary man of common sensibilities would have no trouble understanding the language of the Huntsville City Ordinance. Any confusion resulting from the ordinance is a product of Petitioner's legal sophistry. *Kay* v. *U.S.*, 303 US 1, 82 L. Ed 607, 58 S.Ct. 468 (1938) Furthermore, there is a strong presumption of validity of statutes. The Honorable Supreme Court of the United States consistently seeks an interpretation which supports the constitutionality of legislation. *United States* v. *National Dairy Products*, 372 U.S. 29, 9 L. Ed 561, 83 S.Ct. 1011, (1963)

The void for vagueness doctrine does not require straining to inject doubt as to the meaning of words where no doubt would be felt by the normal reader. *United States* v. *Powell*, 423 U.S. 87, 46 L. Ed 2d 288, 96 S. Ct. 316 (1976).

If the general class of offenses to which a statute is directed is plainly within its terms, the statute will not be struck down as vague even though marginal cases could be put where doubts may arise. *United States* v. *Harris*, 347 U.S. 612, 98 L. Ed 989, 74 S.Ct. 808, (1954).

Under the above mentioned constitutional standards set by the Honorable Supreme Court, the Trespass Ordinance of the City of Huntsville is constitutional.

B. There Is Ample Evidence In The Record Of This Case To Support The Conclusion That Petitioners Acted "Knowingly" Or Remained On the Premises "Unlawfully" Under The Terms Of The Huntsville Trespass Ordinance.

Incorporating the argument in the previous issue, supra, the City contends that the terms "knowingly" or "unlawfully" are easily understood by the ordinary individual in the context of the City's Trespass Ordinance. These terms are not so vague that men or ordinary intelligence would have trouble understanding the meaning. The City's arguments, supra, concerning vagueness are certainly applicable to this issue because the language of the Alabama Ordinance is not vague.

The Petitioners again make a bare assertion unsupported by the facts when they allege that there is a violation of the Fourteenth Amendment by the City of Huntsville. The record of this trial shows that two of the Petitioners, Bailes and Woodley, had recently been discharged as employees of Albertsons. At the time of their dismissal, Bailes and Woodley were advised that they would not be permitted to return to the store for any reason. (Tr. 61) When Bailes and Woodley entered the store, Albertsons' management requested the two former employees to leave immediately. (Tr. 61) They refused. The former employees along with Petitioners Powers and Norwood proceeded to the "deli" area of the store and sat down. Albertsons called the police. (Tr. 64)

Several police officers responded. The store manager repeated his request to leave. The Petitioners remained. Then the police asked the Petitioners to leave. Petitioner

Powers refused to leave and was arrested. The other three left voluntarily and were not arrested. (Tr. 21, 24).

Later in the afternoon the same four individuals returned. Again they were asked to leave, but they refused. The police asked the group to depart and when they refused, they were arrested for criminal trespass. This same disruptive scene was repeated later in the evening and resulted in more arrests. (Tr. 39-57).

With so many warnings by the police and the owners of the property it is inconceivable to think that the Petitioners did not *knowingly* remain on the premises *unlawfully*. The evidence overwhelmingly shows that Petitioners knowingly and unlawfully remained on the premises in violation of the City's Trespass Ordinance. Petitioners caused a major disturbance *inside* the Albertsons Store and the management of Albertsons was certainly entitled to use the law of trespass to eject those causing the disturbance.

The standard formulation of the test for unconstitutional vagueness is that of Justice Sutherland in *Connally* v. *General Construction*, 269 U.S. 385, 391, 46 S.Ct. 126, 127, 70 L. Ed 332;

> "That the terms of a penal statute creating a new offense must be sufficiently explicit to inform those who are subject to it. What conduct on their part will render them liable to its penalties it is a well-recognized requirement. Consonant alike with ordinary notions of fair play and the settled rules of law; and a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law."

The Huntsville City Ordinance certainly meets these requirements. From the facts of the case there is ample

evidence to support the conclusion that Petitioners acted knowingly and unlawfully.

C. The Court Of Criminal Appeals Correctly Found The Petitioners Guilty of Trespass

The record of the present case is completely void of any evidence that would support Petitioner's contention that the Alabama Court of Criminal Appeals found that Petitioners had the burden to show they were on the premises lawfully. In other words, there is no evidence in the case at bar that the Court of Criminal Appeals placed the burden of proof on the Petitioners to prove their innocence. As prosecutor, the City of Huntsville, had the burden of proving Petitioners guilt beyond a reasonable doubt.

Petitioners' assertion that the Petitioners were required to prove their innocence is another bald assertion unsupported by the facts in the case. Petitioners bend the facts of the case to support their argument. The Court of Criminal Appeals analyzed the United States Supreme Court case of *NLRB* v. *Babcock and Wilcox Co.*, 351 U.S. 105, 75 S.Ct. 679, 100 L. Ed 975 (1956). The Court of Criminal Appeals noted that a stricter standard was established as to non-employee union organizers. In addition, the U.S. Supreme Court refused generally to permit organizational solicitation on company property unless the employees could only be reached while on the employers' premises. (Appendix, 46a, 47a). The Alabama Court of Criminal Appeals correctly followed a decision of the United States Supreme Court in deciding the present case. There is no evidence that the Alabama Court of Criminal Appeals changed the burden of proof so that the Petitioners were required to prove their innocense. See *Babcock, supra; Sears Roebuck & Co.* v. *San Diego County District Council of Carpenters*, 436 U.S. 180, 98

S.Ct. 1745, 56 L. Ed 2d 209, (1978); *Central Hardware Co.* v. *National Labor Relations Board*, 407 U.S. 539, 92 S.Ct. 2238, 33 L. Ed 2d 122 (1972).

D. The Trespass Cases Were Handled Like Any Other Trespass Case In The City Of Huntsville. There Is No Evidence In The Record Of This Case To Support The Charge Of Selective Prosecution.

Courts have held that the defense of selective prosecution is not available unless there is proof that (1) there was selectivity in enforcement; (2) that the selectivity was intentional; and (3) that selectivity was based upon some invidious or unjustifiable standard such as race, religion, or other arbitrary classification. *Starley* v. *City of Birmingham*, 377 So.2d 1131, (Ala. Crim. App. 1979); see also *Oyler* v. *Boles*, 368 U.S. 448, 82 S.Ct. 501, 7 L. Ed 2d 446 (1962); *Snowden* v. *Hughes*, 321 U.S. 1, 64 S.Ct. 397, 88 L. Ed 497 (1944).

Since Petitioners have not introduced any evidence on any Court level as to such defensive matter, and there is, in fact, not one fiber or shred of evidence to substantiate that bald assertion, the Petitioners should not prevail on that contention at this late date.

The unrebutted testimony of all the police officers involved in this case is that the arrests were made and handled in the same manner as any other trespass case in the City of Huntsville (Tr. 24, 32, 43, 44). Thus, Petitioners have failed to prove their assertion of selective prosecution.

CONCLUSION

All of Petitioners arguments are bald assertions unsupported by the facts and the law of the case.

The City of Huntsville, as Respondent, and its Police Department has the prime responsibility to see that the

property rights and interests of its citizens are protected. In carrying out that legitimate police power, the Respondent had adopted as its ordinance the trespass provisions in § 13A-7-4 of the Alabama Criminal Code (1975).

The definition of "trespass" in the Huntsville City Ordinance is exact and straightforward. It is not unconstitutionally vague. Nor is it so broadly drawn that it invades an area of protected expression. Its application is limited by the word of art "unlawfully" only to those who are in a place where they have no right to be. A statute is not unconstitutionally vague if it is set out in terms that an ordinary person using ordinary common sense can understand and comply with. An ordinary man of common sensibilities would have no trouble in understanding the Huntsville City Ordinance.

The evidence before the Trial Court clearly shows that Petitioners knowingly and unlawfully remained in Albertsons in violation of the Huntsville Trespass Ordinance.

The Respondent, City of Huntsville, met its burden of proof in establishing the guilt of the Petitioners beyond a reasonable doubt.

There has been no evidence presented by the Petitioners that would substantiate the bald assertion that the Appellee has enforced their "trespass after warning" ordinance in a selective and discriminatory manner, and that same was done to "chill" Appellants' constitutional rights to organize a union. To the contrary the evidence clearly shows that the Petitioners refused to leave a place of business after their actions proved disruptive and they had been asked to leave both by management and the police officers. (Tr. 57, 58, 72, 89).

Since the Petitioners have seen fit to base their defense throughout only on the testimony presented by Respondent in the Huntsville Municipal Court, they should now be bound by the presumptions attendant to trials and hearings that are held without aid of jury, and therefore the verdicts of guilt rendered against the Petitioners in the Municipal Court and the Madison County Circuit Court are due to be affirmed. The validation of the verdict upon review in the Alabama Court of Criminal Appeals and the denial of certiorari by the Alabama Supreme Court should be upheld.

Respectfully submitted,

CHARLES H. YOUNGER
WALTER A. RECORD, III
City Attorney's Office
P.O. Box 308
Huntsville, AL 35804
(205) 532-7301
Attorneys for Respondent